

## REMARKS

In the Office Action<sup>1</sup>, the Examiner rejected claims 7 and 8 under 35 U.S.C. § 101, as allegedly directed to non-statutory subject matter; rejected claims 1-5 under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; rejected claims 7 and 8 under 35 U.S.C. § 102(b) as being allegedly anticipated by "Syndicated television programming" ("*Syndication*"); rejected claim 1-5 under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 5,873,071 to Ferstenberg et al. ("*Ferstenberg*"); and rejected claims 6-9 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Ferstenberg*.

By this Amendment, Applicant amends claims 1-9. Applicant respectfully submits that the present amendments to claims 7 and 8 render moot the rejection of these claims under 35 U.S.C. § 101. For example, claim 7, as amended, recites "attaching rights indicated by media content rights information to the identified media content; and selling the identified media content and the attached rights to the seller." Therefore, amended claim 7 recites a "useful result" within the scope of 35 U.S.C. § 101.

Applicant respectfully traverses the rejection of claims 1-5 under 35 U.S.C. § 112, second paragraph. The Examiner states, "[t]aking into consideration the function that is recited, it seems to the examiner that structurally, the input means that allows

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

data to occur is the same regardless of who is sending the data that is to be received” (Office Action at p. 3).

Claim 1 recites an information processing system, including structure in means-plus-function format as provided in 35 U.S.C. § 112, sixth paragraph. For example, claim 1 recites “first input means for receiving first media content via a network from a seller information processing apparatus.” For example, page 29, lines 14-20 of Applicant’s Specification describes a “catalog management server” which “outputs data concerning the new content to a catalog database 64 via the firewall 37 and the database server 61-1 and 61-2, and registers the data in the catalog database 64.”

Claim 1 further recites, “second input means for receiving second information indicating the purchase of rights of predetermined media content from the buyer information processing apparatus via the network.” For example, page 31, lines 9-15 of Applicant’s Specification describes an “order management server 47” which outputs order information created by the buyer 2 to an order database 67.”

Thus, because amended claim 1 recites a structure including “first” and “second” input means each with different functions, the rejected claim is clear and definite. The rejection of independent claim 1 and dependent claims 2-5 under 35 U.S.C. § 112, second paragraph, should be withdrawn.

Applicant respectfully traverses the rejection of claims 7 and 8 under 35 U.S.C. § 102(b) as being allegedly anticipated by *Syndication*. For example, independent claim 7, as amended, recites a transaction method for settling a transaction of media content comprising, among other things, the steps of:

settling the transaction of the media content generated between the seller and a buyer by attaching rights indicated by media content rights information to the identified media content; and

selling the identified media content and the attached rights to the seller.

*Syndication* discloses the practice of selling rights to the presentation of television programs, especially to more than one customer such as a television station, a cable channel, or a programming service such as a national broadcasting system (p. 1, paragraph 1). According to the Examiner, “when the rights to broadcast a television program are bought, it is inherent that information concerning the content (what kind of program) and the broadcasting rights (what are the actual specified broadcast rights being sold) associated with the content would be received” (Office Action at p. 4).

However, because *Syndication* merely refers to selling the rights to presenting content, *Syndication* fails to disclose or suggest attaching rights to the media content and selling the identified media content. Nothing in *Syndication* discloses or suggests attaching rights to the media content and selling the identified media content. Therefore, *Syndication* fails to disclose or suggest at least the claimed step of “selling the identified media content and the attached rights to the seller,” as recited in amended claim 7. Claim 8 depends from independent claim 7 and distinguishes *Syndication* for at least the same reasons as independent claim 7.

The Examiner took Official Notice regarding the subject matter recited in claims 7 and 8 (Office Action at p. 4). According to the Examiner, “this method was on public use more than one year prior to the filing date of the instant application.” Applicant respectfully disagrees.

An Official Notice rejection is improper unless the facts asserted are well-known or common knowledge in the art, and capable of instant and unquestionable demonstration as being well-known. See M.P.E.P. § 2144.03, the procedures set forth in the Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy dated February 21, 2002, and the precedents provided in *Dickinson v. Zurko*, 527 U.S. 150, 50 U.S.P.Q.2d 1930 (1999) and *In re Ahlert*, 424 F.2d, 1088, 1091, 165 U.S.P.Q. 418, 420 (CCPA 1970). Further, any facts asserted as well-known should serve only to “fill in the gaps” in an insubstantial manner. It is never appropriate to rely solely on “common knowledge” without evidentiary support in the record as the principal evidence upon which a rejection is based.

Applicant respectfully submits that the recitations found in claim 7 and 8 are not unquestionably well-known. In fact, because *Syndication* fails to disclose or suggest selling the identified media content, the Examiner has failed to demonstrate the claimed selling the identified media content. Accordingly, Applicant traverses the Official Notice taken by the Examiner.

Applicant respectfully traverses the rejection of claims 1-5 under 35 U.S.C. § 102(b) as being allegedly anticipated by *Ferstenberg*. For example, independent claim 1, as amended, recites an information processing system comprising, among other things:

first input means for receiving first media content information via a network from a seller information processing apparatus; and

first recording means for recording the first media content information.

*Ferstenberg* discloses a computer system that facilitates exchange of commodities between users according to the user's goals (col. 1, lines 6-10). As cited by the Examiner (Office Action at p. 5), examples of the items exchanged include intangibles, such as securities (stocks, bonds, and options) commodity features, collateralized mortgage obligations, and pollution rights, as well as tangibles, such as copper and soy beans (col. 1, lines 14-25).

The system disclosed by *Ferstenberg*, however, does not disclose or suggest first input means for receiving first media content information via a network from a seller information processing apparatus. Furthermore, while the Examiner asserts, "the commodity that is being sold is not part of the system and claiming a specific commodity does not change the overall system," nothing in *Ferstenberg* discloses or suggests recording first media content information.

Because the system disclosed by *Ferstenberg* simply allows a plurality of participants to exchange financial commodities, *Ferstenberg* fails to disclose or suggest at least first input means for receiving first media content information via a network from a seller information processing apparatus; and first recording means for recording the first media content information, as recited in amended claim 1.

Claims 2-5 depend from independent claim 1 and distinguish *Ferstenberg* for at least the same reasons as independent claim 1. In addition, each of the dependent claims may recite unique combinations that are neither taught nor suggested by prior art.

Applicant respectfully traverses the rejection of claims 6-9 under 35 U.S.C. § 103(a) as being allegedly unpatentable over *Ferstenberg*. For example, independent

claim 6, as amended, recites an information processing method comprising, among other things, the steps of:

receiving first media content information via a network  
from a seller information processing apparatus; and

recording the first media content information.

As set forth above, the system disclosed by *Ferstenberg* fails to disclose or suggest receiving first media content information via a network from a seller information processing apparatus. While the Examiner asserts that *Ferstenberg* “discloses an intermediary system that allows buyers and sellers of a commodity to interact and negotiate with each other” (Office Action at p. 8), nothing in *Ferstenberg* discloses or suggests receiving or recording first media content information. Therefore, the subject matter of claim 6 would not have been obvious to one of ordinary skill in the art in view of *Ferstenberg*.

Independent claims 7 and 9, although of different scope than claim 6, distinguish *Ferstenberg* for at least the same reason as claim 6. Claim 8 depends from independent claim 7 and is therefore allowable for at least the same reasons as independent claims 6, 7, and 9. In addition, claim 8 may recite unique combinations that are neither taught nor suggested by prior art.

Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections under 35 U.S.C. § 103(a).

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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